

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

333 W. COIFAX AVENUE, SUITE 400
DENVER, COLORADO 80204

AUG 7 1986

EMERY MINING CORPORATION,	:	CONTEST PROCEEDING
Contestant	:	
	:	Docket No. WEST 86-126-R
v.	:	Citation No. 2834575; 4/15/86
	:	
SECRETARY OF LABOR,	:	Deer Creek Mine
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
Respondent	:	
and	:	
UNITED MINE WORKERS OF AMERICA,	:	
(UMWA),	:	
Intervenor	:	

DECISION

Appearances: John A. Macleod, Esq., and Ellen Moran, Esq.,
Crowell & Moring, Washington, D.C.,
for Contestant;
Edward Fitch, Esq., Office of the Solicitor, U.S.
Department of Labor, Arlington, Virginia,
for Respondent;
Mary Lu Jordan, Esq., United Mine Workers of
America, Washington, D.C.,
for Intervenor.

Before: Judge Morris

This is a contest proceedings initiated by contestant Emery Mining Corporation pursuant to § 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., (the Act), Emery has contested a citation issued under § 104(a) of the Act by the Mine Safety and Health Administration, (MSHA), on April 15, 1986.

The citation alleged Emery violated § 103(f) of the Act in refusing to permit an international representative of the United Mine Workers of America (Intervenor UMWA) to accompany an MSHA inspector on a regular inspection of Emery's Deer Creek mine.

Emery, in its notice of contest, asserts that it did not violate § 103(f) of the Act because it permitted a representative authorized by his miners to accompany the inspector. Further, Emery permitted the UMWA representative (Mr. Rabbitt) to accompany the inspector subject to his compliance with Emery's policy at the mine. Emery's policy requires that a written notice be given at least 24 hours before the UMWA representative visits the mine. Further, the policy requires that the UMWA representative sign a release and waiver form before entering the mine.